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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/610,955  
Filing Date: July 01, 2003  
Appellant(s): MYR, DAVID

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Lawrence A. Ashery (Reg. No. 34,5150)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 09 June 2008 appealing from the Office action mailed 27 December 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

## **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

## **(8) Evidence Relied Upon**

2001/0039506                      ROBBINS                      11-2001  
GALATY, ALLAWAY, KYLE, Modern Real Estate Practice, 2002

## **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

### ***Claim Rejections - 35 USC § 101***

Claims 1 – 12 are not patentable under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. For a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention is useful for determining appraisal values of a property, however, it does not produce concrete results because for a user to use applicant's claimed invention, the user is required to program the computer system to generate the result they desire. After the user has programmed the computer, applicant's claimed invention is display the result of the appraisal value to the user. Two user using applicant's invention can program the device differently which will produce

different results even when they use the same data of influence factors and range of influence factor.

***Claim Rejections - 35 USC § 112***

Claims 1 – 12 are not patentable under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claims 1 and 12, applicant added the limitation “performing nonlinear programming with a predetermined nonlinear objective function” which is not supported by the disclosure originally filed 01 July 2003.

Claims 1 – 12 are not patentable under 35 U.S.C. 112, second paragraph, as being vague and indefinite because it is not clear whether performing of nonlinear programming is actually programming the computer, or, it is inputting of property related data in the computer which is already has nonlinear program.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite. In lines 5 - 9, applicant recites the limitation a calculator for 1) performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches according to the stored influence factors and the range of stored influence factor values and 2) determining an optimal

range of appraisal values for the real estate property from the performed nonlinear programming according to each of the different types of appraisal approaches; As currently claimed, it is not clear whether calculator performs limitations as recited, or, it is applicant's intention on how the calculator will be used.

***Claim Rejections - 35 USC § 103***

Claims 1 – 12 are deemed unpatentable under 35 U.S.C. 103(a) over Robbins US Publication 2001/0039506 in view of Modern Real Estate Practice by Galaty et al. hereinafter known as Galaty.

Regarding claims 1 and 12, as best understood by examiner, Robbins teaches computer related method for appraising a real estate property. Robbins does not explicitly teach using all three sales comparison approach, an income capitalization approach and a cost approach as different types of appraisal approaches. However, Robbins teaches that In determining the market value of a subject property an appraiser generally considers three separate approaches to value; the Cost Approach, the Income Approach, and the Sales Comparison Approach [Robbins, 0080]. Galaty teaches that appraisers use three basic valuation techniques: the sales comparison approach, the cost approach and the income approach as checks against each other for narrowing the range within which the final estimate of value falls [Galaty, page 304, last paragraph].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Robbins with teachings of Galaty and generate appraisal using sales comparison approach, the cost approach and the income approach to make the appraisal more useful by checking valuations from different approaches against each other for narrowing the range within which the final estimate of value falls.

Robbins in view of Galaty teaches capability for:

Storing influence factors and a range of influence factor values for each of different types of appraisal approaches [Galaty, page 313; Robbins, [0032], claim 56]  
performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches according to the stored influence factors and the range of influence factor values:

providing signals indicative of an optimal range of appraisal values for the real estate property from the performed nonlinear programming according to each of the different types of appraisal approaches [Galaty, page 305-313].

Presenting on output means providing signals indicative of an optimal range of appraisal values for the real estate property on output means [Galaty, page 133; Robbins, claim 56];

Regarding claim 2, as best understood by examiner, Robbins in view of Galaty teaches capability for optimizing the stored range of influence factors values of each of the different types of appraisal approaches.

Regarding claim 3, as best understood by examiner, Robbins in view of Galaty teaches capability for eliminating all discrepancies or outliers of the stored influence factors.

Regarding claim 4, as best understood by examiner, Robbins in view of Galaty teaches capability for obtaining a respective optimal range of appraisal values for each of the different types of appraisal approaches.

Regarding claim 5, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a feasibility study to determine whether the optimal range of appraisal values meets predetermined economic return requirements for the real estate property.

Regarding claim 6, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a sensitivity analysis using the stored influenced factors for each of the different types of appraisal approaches together to determine a sensitivity of the optimal range of appraisal values to changes in each of the stored influence factors.



Regarding claim 7, as best understood by examiner, Robbins in view of Galaty teaches capability to reconcile the optimal ranges of appraisal values for each of the different types of appraisal approaches.

Regarding claim 8, as best understood by examiner, Robbins in view of Galaty teaches capability to search for combinations of the stored influenced factors that automatically produce a same optimal value as for the influence factors stored individually

Regarding claim 9, as best understood by examiner, Robbins in view of Galaty teaches capability for performing a highest and best use analysis to determine a financial feasibility criteria for each separate use;

Regarding claim 10, as best understood by examiner, Robbins in view of Galaty teaches capability wherein the predetermined nonlinear objective function uses project periods that are considered in one of the different types of appraisal approaches

Regarding claim 11, as best understood by examiner, Robbins in view of Galaty teaches capability for calculating different capitalization rates that are considered in one of the different types of appraisal approaches.

### **(10) Response to Argument**

In response to appellant's argument that using the specification, the skilled person would understand that two people that apply a) the same influence factors and b) the same range of influence factor values as inputs to nonlinear programming that uses a **predetermined objective function would produce the same result**. Also, appellant argues that it is well established that the subject matter at p. 8, line 1-p. 9, line 3 of the originally filed specification describes the support for claimed feature.

However, appellant is arguing a limitation not positively claimed by the appellant, in independent claim 1, element b, appellant recites the limitation "performing nonlinear programming with a predetermined nonlinear objective function that uses each of the different types of appraisal approaches according to the stored influence factors and the stored range of influence factor values". Programming (aka coding) is a process wherein a programmer using a programming language writes an application which is executable on a processor. In addition, as disclosed by the appellant at p. 8, line 1-p. 9, line 3 of the originally filed specification, the appraiser or the programmer chooses what data to use, what formula(e) to use for calculation etc for property valuation. This clearly shows that appellant's invention generates the results based on what formula(e) were selected by the appraiser or the programmer which could result generating different values when same data is used and at least two appraisers or programmers select the formula(e) they decide to use.

In response to appellant's argument that the cited references do not teach the claimed invention.

However, Robbins teaches system and method which use a model to generate appraisal value for a real estate property. Galaty teaches that to arrive at an accurate estimate of value, appraisers traditionally use their basic valuation techniques; the sales comparison approach, the cost approach, and the income approach. At the time of invention one of ordinary skill in the art could have modified Robbins by adopting teaching of Galaty to combine prior art elements according to known methods to yield predictable results, applying a known technique to a known device or method ready for improvement to yield predictable result.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3600

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Naresh Vig/

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